Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Bonilla, et al.	Analyst:	Jane Raboy	Bill Number:	AB 1956
Related Bills:	See Prior Analysis	Telephone:	845-5718	Amended Date:	May 15, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Contributions to Qualified Tuition Plan Account Refundable Credit

SUMMARY

This bill would create a refundable credit for contributions to a qualified tuition plan account under the Personal Income Tax Law.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 15, 2014, amendments added several co-authors and added a sunset date and a repeal date. As a result of the amendments, a policy concern was resolved. In addition, the "Support/Opposition" has been updated. Except for the "Effective/Operative Date," and "This Bill" sections, the department's analysis of the bill as amended April 1, 2014, still applies. The "Implementation Considerations," "Technical Considerations," "Fiscal Impact," "Economic Impact," and "Policy Concerns" have been restated for convenience.

Summary of Suggested Amendments

Amendments 1 through 6 are suggested to clarify terms, and provide for consistent use of terminology.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2015, and before January 1, 2020.

ANALYSIS

THIS BILL

For taxable years beginning on or after January 1, 2015, and before January 1, 2020, this bill would allow a credit equal to the lesser of 20 percent of the monetary contributions made by a qualified taxpayer to a qualified tuition program that the qualified taxpayer owns during the taxable year, or $500.

Board Position:			Asst. Legislative Director	Date
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This bill would define the following phrases:

- "Nonqualified withdrawal" means any payment or distribution from a qualified tuition program that is subject to additional tax pursuant to Section 529(c)(6) of the Internal Revenue Code (IRC), relating to additional tax (on distributions not used for educational expenses).
- "Qualified taxpayer" means an individual who, on behalf of a beneficiary, contributes money to a qualified tuition program for which the individual is the account owner and has one of the following annual adjusted gross incomes:
  - If the qualified taxpayer's filing status is single, married filing separately, or domestic registered partner filing separately, $100,000 or less.
  - If the qualified taxpayer files as a head of household, surviving spouse, as defined in Section 17046, married filing jointly, or domestic partner filing jointly, $200,000 or less.
- "Qualified tuition program" means a qualified tuition program, as defined in Section 529 of the IRC.

In the case of married taxpayers or registered domestic partners who file separate returns, the credit may be taken by either spouse or registered domestic partner or divided equally between the spouses or registered domestic partners.

An additional tax would be imposed on a qualified taxpayer who receives a nonqualified withdrawal in an amount that is the lesser of:

- 10 percent of that nonqualified withdrawal, or
- The total credit amount allowed for the current taxable year and all prior taxable years that the qualified taxpayer was allowed a credit.

Upon an appropriation by the Legislature, the portion of any credit allowed that is in excess of tax liability, would be required to be paid to the qualified taxpayer.

This bill would authorize the Franchise Tax Board (FTB) to prescribe rules, guidelines, or procedures necessary or appropriate to administer the credit.

Any standard, criterion, procedure, determination, rule, notice, or guidelines established or issued by the FTB would be exempt from the Administrative Procedures Act.[1]

This credit would remain in effect only until December 1, 2020, and would be repealed as of that date.

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[1] Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill would require regular annual appropriations by the Legislature to pay for the refundable portion of this credit. If sufficient funds fail to be appropriated to cover all of the refunds due, the department would suspend payment of refunds until additional funds were appropriated. Interest would have to be paid to refund recipients for the period the refund was delayed. This delay would result in additional contacts to the department by refund recipients, which would likely increase departmental costs. Furthermore, absent a carryover provision in this bill, the taxpayer would be unable to claim the refund in subsequent years.

The FTB does not currently administer a refundable tax credit. Establishing a refundable tax credit program would have a significant impact on the department’s forms, processes, and systems. Additionally, the department’s experience administering refundable credits indicates that the cost to detect fraudulent refund claims would be significant.

With the exception of contributions to the California Scholarshare program, it is unclear how the department could verify that the contributions were made to a qualified tuition program.

The bill lacks language that would allow the department to apply the refundable portion of the credit for a tax year against other amounts due from a taxpayer for another tax year. Absent this language, monies may be refunded even though the taxpayer owes a liability.

TECHNICAL CONSIDERATIONS

The phrase on page 2, lines 10 to 11, "qualified tuition program that the qualified taxpayer owns during the taxable year" is inconsistent with the definition of qualified taxpayer. Amendment 1 would correct the inconsistency.

The language on page 2, lines 22 through 23, lines 26 through 27, lines 31 through 34, includes a reference to registered domestic partners that is unnecessary since existing state law provides this general rule. Amendments 2 through 6 would remove the unnecessary language.

FISCAL IMPACT

The FTB does not currently administer a refundable tax credit. Establishing a refundable tax credit program would have a significant impact on the department’s programs and operations and require extensive changes to forms and systems.

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved, but anticipate the costs to be significant.

ECONOMIC IMPACT

Revenue Estimate

This proposal would allow any account owner, regardless of whether they have a filing requirement in California, to file for a refundable tax credit based on contributions to their 529 plan. Once fully implemented, the revenue loss is estimated at approximately $800 million per year.

SUPPORT/OPPOSITION[2]

Support: Bill Lockyer, California State Treasurer (Sponsor), Asset Building Strategies, California Association of Private School Organizations, California Catholic Conference, Financial Services Institute, National Association of Insurance Advisors-California, and State Farm Mutual Automobile Insurance Company.

Opposition: The American Federation of State, County and Municipal Employees, California Tax Reform Association, California Taxpayers Association, and California Teachers Association.

POLICY CONCERNS

Eligibility for the refundable credit would include (1) individuals that are located outside of the state and (2) individuals that contribute to another state's 529 plan. For example, if an Ohio resident contributes to an Ohio 529 plan, the Ohio resident could file a tax return in California requesting a refund for the contribution to the 529 plan even though the Ohio resident has no nexus in California. Providing a refundable credit for activity that has no connection to the state is unprecedented and would be costly to California.

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited to a maximum aggregate amount per taxable year.

LEGISLATIVE STAFF CONTACT

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[2] As noted in the Assembly Revenue and Taxation Committee bill analysis hearing date May 13, 2014.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1956
AS AMENDED MAY 15, 2014

AMENDMENT 1

On page 2, lines 10 - 11, strikeout “that the qualified taxpayer owns” and insert:

for which the individual is the account owner

AMENDMENT 2

On page 2, lines 22 - 23, strikeout “single, married filing separately, or domestic registered partner” and insert:

single or married

AMENDMENT 3

On page 2, lines 26 - 27, strikeout “married filing jointly, or domestic partner" and insert:

or married

AMENDMENT 4

On page 2, lines 31 - 32, strikeout “or registered domestic partners".

AMENDMENT 5

On page 2, line 33, strikeout "or registered domestic partner”.

AMENDMENT 6

On page 2, line 34, strikeout "or registered domestic partners”.